

### **REMARKS**

Claims 45-64 are pending. Claims 41-44 have been cancelled. Applicants reserve the right to prosecute the cancelled subject matter in one or more continuation, continuation-in-part, or divisional applications.

The new claims are fully supported by the instant specification. For example, claims 45 and 55 are supported on page 8, lines 8-16 and page 26, lines 7-15 and page 28, lines 2-11 of International Patent Publication WO 01/12674. Claims 46, 50, 56, and 60 are supported on page 4, lines 4-18 of International Patent Publication WO 01/12674. Claims 47-49, 51-53, 57-59, and 61-63 are supported on page 4, lines 21-23 and page 28, lines 16-21 of International Patent Publication WO 01/12674. Claim 64 is supported on page 25, lines 26-29 of International Patent Publication WO 01/12674. Thus, no new matter has been added to the claims.

### **Priority**

The Examiner has stated that the effective filing date of the claims is deemed as the filing date of the instant application (*i.e.*, September 16, 2002) rather than the earlier filing date of priority application PCT/US00/21574<sup>1</sup> (*i.e.* August 8, 2000). The Examiner alleges that the claims lack adequate written description and enablement in the priority application and thus cannot claim the benefit of priority under 35 U.S.C. §120. Applicants respectfully disagree. The present application is a national stage entry under 35 U.S.C. §371 of International Patent Application No. PCT/US00/21574 and thus have identical disclosure. Applicant contends that the claims as currently pending are described and enabled by International Patent Application No. PCT/US00/21574 and thus can properly claim priority to

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<sup>1</sup> The Office Action recites application number PCT/US02/21574, however, Applicant believes this to be a typographical error.

the international application. Applicant respectfully requests acknowledgement of the priority claim.

### **Specification**

The Examiner has objected to the specification because of alleged use of improperly demarcated trademarks. The specification has been amended. Thus the Applicant requests that the objection be withdrawn.

### **Rejections Under §112**

Claim 37 is rejected under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 37 is rejected under 35 U.S.C. §112, first paragraph as failing to comply with the written description requirement.

Claim 37 is rejected under 35 U.S.C. §112, first paragraph for lack of enablement.

Without conceding that the Examiner's rejections of claim 37 under 35 U.S.C. §112 are correct, and solely to further the prosecution of the pending claims, Applicant has cancelled claim 37. The currently pending new claims are fully supported, enabled and described by the instant specification and meet the standards set by 35 U.S.C. §112.

In view of the foregoing, applicants respectfully request that the rejections under 35 U.S.C. § 112 are reconsidered and withdrawn.

**Rejection Under §102**

Claim 37 rejected under 35 U.S.C. §102(b) as being anticipated by International Patent Publication WO 01/012674 (hereafter “the ‘674 publication”). Applicant respectfully disagrees.

The ‘674 publication corresponds to International Patent Application No. PCT/US00/21574. The instant application is a national stage entry under 35 U.S.C. §371 of International Patent Application No. PCT/US00/21574 and thus has an identical disclosure and filing date. As such, the ‘674 publication was not a disclosure of the claimed invention “more than one year prior to the date of application for patent” as required by 35 U.S.C. §102(b).

In view of the foregoing, applicants respectfully request that the rejection under 35 U.S.C. § 102 is reconsidered and withdrawn.

**Provisional Double Patenting Rejection**

Claim 37 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatenable over claim 6 of co-pending Application Serial No. 11/332,849 (hereafter “the ‘849 application”). Applicant respectfully requests that this rejection be withdrawn until such time that there are issued claims in either the present application or in the ‘849 application.

**CONCLUSION**

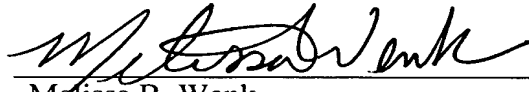
It is believed that the elected claims are in condition for allowance. Early and favorable action by the Examiner is earnestly requested.

**AUTHORIZATION**

No fee is believed due. However, the Commissioner is hereby authorized to charge any fees which may be required for consideration of this Amendment to Deposit Account No. 13-4500, Order No. 3828-4000US2.

Respectfully submitted,  
MORGAN & FINNEGAN, L.L.P.

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